

3-130A050

3-130A050

LAW OFFICES

MILES & STOCKBRIDGE

10 LIGHT STREET

BALTIMORE, MARYLAND 21202

300 ACADEMY STREET  
CAMBRIDGE, MARYLAND 21613

101 BAY STREET  
EASTON, MARYLAND 21601

11350 RANDOM HILLS ROAD  
FAIRFAX, VIRGINIA 22030

30 WEST PATRICK STREET  
FREDERICK, MARYLAND 21701

22 WEST JEFFERSON STREET  
DOCKVILLE, MARYLAND 20850

600 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204

1450 G STREET, NW  
WASHINGTON, D.C. 20005

INTERSTATE COMMERCE COMMISSION

May 7, 1993

VIA FEDERAL EXPRESS

Interstate Commerce Commission  
12th and Constitution Avenues, N.W.  
Washington, D.C. 20423

Attention: Mildred Lee, Room 2303

INTERSTATE COMMERCE COMMISSION

RE: \$150,000 Loan from The First National  
Bank of Maryland to ITG, Inc.

Dear Ms. Lee:

Enclosed please find one (1) executed original and one (1) notarized copy of each of the following documents for the above-referenced matter:

- 1) Railroad Car Lease Agreement by and between ITG, Inc. (Lessor) and United States Gypsum Company (Lessee);
- 2) Assignment of Lessor's Interest in Leases by ITG, Inc. (Pledgor) in favor of The First National Bank of Maryland (Lender); and
- 3) Security Agreement by and between ITG, Inc. (Borrower) and The First National Bank of Maryland (Bank).

Please record these documents among the records of the Interstate Commerce Commission. I have enclosed three (3) checks each in the amount of \$16.00 to cover recordation costs.

Once the documents have been recorded, please return the originals to:

John A. Stalfort, Esquire  
Miles & Stockbridge  
10 Light Street  
Baltimore, Maryland 21202.

MAY 10 10 44 AM '93  
MOTOR OPERATING UNIT

18230  
RECORDATION NO. 18230  
FILED 1425

MAY 10 1993 10:50 AM

INTERSTATE COMMERCE COMMISSION

18230  
RECORDATION NO. 18230  
FILED 1425

MAY 10 1993 10:50 AM

INTERSTATE COMMERCE COMMISSION

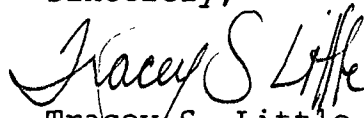
(2)

MILES & STOCKBRIDGE

Page 2  
May 7, 1993  
Interstate Commerce Commission

If you have any problems or questions, please contact me immediately at (410) 385-3658. Thank you for your assistance in this matter.

Sincerely,

  
Tracey S. Little  
Legal Assistant

Enclosures

**Interstate Commerce Commission**

Washington, D.C. 20423

5/10/93

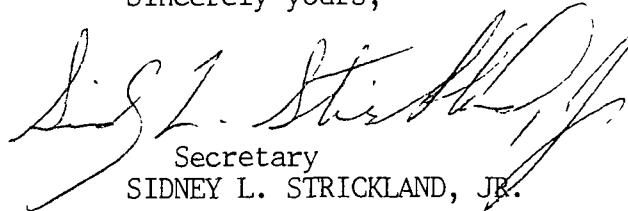
OFFICE OF THE SECRETARY

John A. Stalfort, Esq.  
Miles & Stockbridge  
10 Light Street  
Baltimore, Maryland 21202

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions  
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,  
on 5/10/93 at 10:50am , and assigned  
recordation number(s). 18230, 18230-A & 18230-B

Sincerely yours,



Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

**Interstate Commerce Commission**

Washington, D.C. 20423

5/10/93

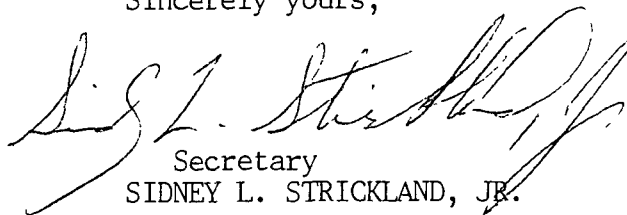
OFFICE OF THE SECRETARY

John A. Stalfort, Esq.  
Miles & Stockbridge  
10 Light Street  
Baltimore, Maryland 21202

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions  
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,  
on 5/10/93 at 10:50am , and assigned  
recordation number(s). 18230, 18230-A & 18230-B

Sincerely yours,



Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

MAY 10 1993 10:50 AM

## RAILROAD CAR LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

This agreement, No. ITG-2368, made and entered into August 4, 1992 by and between ITG, Inc., a Texas Corporation with its principle office and place of business in Victoria, Texas (herein called "LESSOR") and United States Gypsum Company, a Delaware Corporation with its principle office and place of business in Chicago, Illinois, (herein called "LESSEE").

## WITNESSETH:

Description  
of Leased  
Cars

1. Lessor agrees to furnish to Lessee, and Lessee agrees to rent from Lessor, the railroad cars shown on Rider No. 01, attached hereto and made a part of hereof, and such additional Riders as may be added to hereto from time to time by mutual agreement of the parties and signed by each of their duly authorized representatives. Each Rider shall set forth a brief description of the car, or cars, car initials and numbers, the Association of American Railroads ("AAR"), or Interstate Commerce Commission ("ICC") specifications, cubic capacity, truck capacity, delivery point, rental term throughout which the cars shall remain in

Lessee's service, and other pertinent information that may be desired by both parties.

**Use of Cars:** 2. Lessee agrees to use said cars under the following restrictions:

(a) The cars will be delivered to Lessee at J. M. Huber Co., in Quincy, IL. (BN) consigned for loading and Lessee agrees such cars shall be used and operated at all times in compliance with all lawful acts, rules, regulations and orders issued by the railroads on which the cars are operated and government agencies.

(b) At the expiration or termination of the rental term of the particular Rider applicable to each such car described in such Rider, Lessee shall cause said cars to be returned freight prepaid to Lessor at a point so designated by Lessor not exceeding the mileage distance from the point where the car is last unloaded by Lessee. Any added mileage charges to Lessor's designated return point will be paid by Lessee.

(c) Lessor will cause all cars to be delivered to Lessee in A.A.R. Interchange condition and ready for Lessee's intended service. The cars covered hereby shall be returned to Lessor in

the then current A.A.R. Interchange condition except for ordinary wear and tear. Any dispute on car condition will be resolved through binding arbitration. Each party shall choose an independent arbitrator who shall be a qualified rail car inspector. If these arbitrators fail to agree, they shall choose a third arbitrator who shall be mutually agreeable to both parties. Each party shall bear the cost of the arbitrator it appoints. The parties shall equally share the cost of the third arbitrator if needed.

(d) Lessee agrees the cars will not be altered or modified and no advertising or logos shall be applied to any such car without the approval of Lessor.

(e) Lessee agrees the cars are intended only for use in transporting the following commodity: Dry Bulk Products

The use of these cars for any other purpose is not permitted without prior written approval of Lessor, which will not be unreasonably withheld.

(f) Lessee agrees that the cars will be operated only within the confines of the market area in the United States.

(g) Upon the termination of this lease or extensions thereof, Lessee will remove the interior linings and clean and test the pneumatic systems at Lessee's expense. The cars will be returned to Lessor free of product residue.

**Rent:**

3. Lessee agrees to pay Lessor one month in advance the monthly rental as stated in the applicable Rider for each particular group of cars. Rental will commence on the first day of the first full month the cars are in service. The first and last monthly payments shall be prorated on an interim basis to include any partial months that the cars may be in service. Such rental shall be paid monthly to Lessor in Victoria, Texas or in such other place as Lessor may hereafter direct in writing.

**Term of  
Lease:**

4. The term of this Lease shall commence the date all cars are delivered to the Lessee and terminate no earlier than sixty (60) months or, as stated in the applicable Rider for each particular group of cars from such date, unless this contract is extended or renewed in



writing by mutual agreement, or a new contract is executed. If a written extension is not executed by both parties prior to expiration of the term, the lease shall terminate upon expiration of said period. If the lease is extended one or more times (including Lessee's exercise of its option under Section 21 herein) but a further extension is not executed prior to expiration of the extended term, the lease shall terminate when the extended term expires.

**Repair and  
Maintenance:**

5. This lease is a Full Maintenance Lease with regard to running repairs as specified in the A.A.R. Rules for Interchange, as presented in the "Field Manual" or any such subsequent governing publication. The amount Lessor will pay for such running repairs shall not be in excess of the basis, in effect at the time the repair is made, provided by the Association of American Railroads or subsequent governing agency.

Except for running repairs, the Lessee shall not repair, or authorize the repair of, any of the cars without Lessor's prior written consent which shall be promptly given.

If any repairs are required as a result of Rule 95 damage, the misuse by or negligence of

Lessee, its consignee, agent, or sublessee, or while on a railroad that does not subscribe to, or fails to meet its responsibility under the Interchange Rules of the AAR, or while on any private siding or track or any private or industrial railroad, the rental charge shall continue during the rental period, and the Lessee agrees to pay Lessor for the cost of such repairs. It is understood that no rental credits will be issued for cars in a shop for repairs which are Lessee's responsibility.

Cars governed by this lease are being delivered from Home Shop with new Sigma 7456, or equivalent, epoxy interior linings, current valve tests, clean pneumatic systems, new seals, and new exterior paint.

The Lessee, during the term of this lease or extensions thereof, shall maintain the interior liners, the pneumatic system, and the valves and fittings at his sole expense. Lessee is responsible to maintain the cars free of graffiti.

Lessee shall notify Lessor within three (3) full business days following knowledge of any damage requiring repairs to any of the cars.

**Destruction:** 6. If any car, while under the control of the Lessee, is completely destroyed or, in the opinion of Lessee and Lessor, such car's physical condition is such that it cannot be economically repaired to be operated in railroad service, Lessee will pay Lessor full settlement value. The term "settlement value" as used herein shall mean the valuation of such cars as set forth in Rider No. 02 attached hereto and made a part hereof, or such future Riders to be issued applicable for additional groups of cars. Upon payment of "settlement value" this Lease will terminate with respect to that car. If the parties are unable to agree regarding the repair or regarding the destruction, they shall utilize the same procedures set forth in Paragraph 2(d) hereof regarding arbitration by independent railroad inspectors. However, the rental shall not abate during the resolution or settlement of any such dispute or any repairs being made unless so provided in binding arbitration.

**Indemnity:** 7. Lessee will indemnify Lessor against any loss, damage, claim, expense (including attorneys' fees and expenses of litigation) or injury imposed on, incurred by, or asserted

against Lessor arising directly or indirectly out of Lessee's, its consignee's agents, or shippers' use, lease possession or operation of the cars during the term of the Lease, or by the contents of such cars, however occurring, except any loss, liability, claim, damage or expense arising from latent defects and except for any loss, liability, claim, damage or expenses for which a railroad or railroads have assumed full responsibility and have satisfied such responsibility. All indemnities contained in the Agreement shall survive the termination hereof, however same shall occur for a period of one year. Nothing herein shall be construed as an indemnification against Lessor's negligence.

Lessor will not enter into any settlements for personal injury or property damage claims with any third party without the Lessee having the opportunity to approve the reasonableness of the settlement.

**Insurance:** 8. Lessee shall, at its own cost and expense, at all times, maintain and furnish Lessor with evidence of insurance as follows:

- (a) General Liability Insurance in the minimum amount of One Million Dollars (\$1,000,000.00) covering any loss or claim for damage arising out of or incurred in connection with the use, maintenance or operation of the cars covered by this Agreement.
- (b) All risk insurance covering physical damage to the cars to the full amount of the value of the car according to Rider No. 02. Lessee will effect physical loss insurance coverage prior to the receipt of the cars for service.

All such insurance shall name Lessor and its financial institution (t.b.a.) or any other lien holder designated by Lessor as loss payee. Lessee's obligation to maintain insurance with respect to each car shall continue until the lease thereof is terminated and, if such car is required hereunder to be returned to Lessor, until such return. Lessee shall cooperate and, to the extent possible, cause insurance companies providing such insurance to cooperate with Lessor in naming Lessor and its bank as loss payee with respect to the cars.

**Additional  
Charges by  
Railroad:**

9. All freight or demurrage or other charges made by a Railroad on account of the cars during the term of this lease to include Paragraph 2(b) hereof, shall be paid by Lessee.

**Right of  
Entry:**

10. Lessor shall have the same rights as Lessee to enter the property where the cars are used or stored, at Lessor's own cost and during normal business hours, for the purpose of making car inspections. Lessor will provide Lessee 48 hours advance notice for a planned inspection.

**Payment of  
Taxes:**

11. During the term of the Agreement, Lessee shall promptly pay, when due, use, rental, and excise taxes, assessment and other governmental charges, whatsoever, whether payable by Lessor or Lessee, on or relating to the use of the cars leased hereunder prorated to the actual time covered by this lease or extensions thereof. If for any reason Lessee fails to make full and prompt payment of any such charges, Lessor may, at its option, pay such charges and charge the amount so paid to Lessee. Any expense incurred by the Lessee with respect to contesting the applicability

of such rental or use tax to this Agreement shall be payable by Lessee.

Lessor specifically warrants and represents that as of the date of delivery of each and every car, all sales, use, rental and excise taxes, personal property taxes, assessments and other governmental charges due on such cars have been paid in full and Lessor agrees to indemnify and hold harmless Lessee from any obligations for such taxes.

Lessor is responsible for paying taxes on income generated from the lease of the cars.

**Liens:**

12. Lessee shall not cause or allow any encumbrances or liens to attach to the cars or otherwise permit a cloud on Lessor's title thereto.

**Marking of Cars:**

13. Lessee shall keep the cars, subject to lease, free of any markings which might be interpreted as a claim of ownership.

**Remedies:**

14. Upon the happening of any of the events of default as hereinafter defined, the Lessor or its assignee may then, or at any time thereafter, without notice, take possession of the car and any accessions thereto, wherever same may be found, and remove, keep or dispose

of the same and the balance of unpaid rentals shall up to the date Lessor takes possession become due and payable in full. Lessee shall continue to be responsible for rental as it accrues. However, Lessor shall use due diligence to re-lease the cars and to the extent that any car is re-leased, Lessee shall only be responsible for paying any net rental deficiency during the remaining term of this lease including the cost incurred in obtaining such re-lease. If any step is taken by legal action or otherwise by Lessor to recover possession of equipment or otherwise enforce this Agreement or to collect monies due hereunder, Lessee shall pay Lessor the equivalent of the monies reasonably expended or charges thus incurred in such behalf including all reasonable costs and attorneys fees.

**Default:**

15. The happening of any of the following events shall be considered an "event of default":

(a) Nonpayment by Lessee, within ten days after written notice from Lessor demanding payment thereof.

(b) Failure of Lessee to comply with, or perform, any of the other material terms and conditions of the Agreement within



thirty (30) days after receipt of written notice from Lessor demanding compliance therewith and performance thereof.

(c) The appointment of a receiver or trustee in bankruptcy for Lessee or any of its property and the failure by such receiver or trustee to adopt and assume and agree to perform the obligations of Lessee hereunder within thirty (30) days after such appointment.

**Filing:** 16. Lessor intends to cause this lease to be filed and recorded with the ICC pursuant to 49 U.S.C. Section 1103 of the Interstate Commerce Commission Act. Lessee shall from time to time do and perform any other act, and execute, acknowledge, deliver, any and all further instruments required by law, or reasonably requested by Lessor, for the purpose of protecting its title and rights, or for the purpose of carrying out the intention of this Agreement, and Lessee will promptly furnish to Lessor certificates or other evidences of all such filing, registering, and recording in form satisfactory to Lessor.

**Inspection  
of Cars:**

17. Lessee shall inspect the cars and provide written notice of Lessee's acceptance of the cars. Said acceptance by the Lessee shall be conclusive evidence (i) of the fit and suitable condition of each car for the purpose of transporting dry bulk products then and thereafter loaded therein, and (ii) that they are the cars described in the Riders. If written notice is not received by Lessor within thirty (30) days from initial delivery, it is agreed items (i) and (ii) have been satisfied.

At termination of Lease, a joint inspection will be made; and acceptance thereof by the Lessor shall be conclusive evidence (i) of the fit and suitable condition of such car as required by Paragraph 2(c, d, and g) hereof; and (ii) that they are the cars described in the Riders.

**Car  
Monitoring:**

18. Lessor will have the right to obtain information from Lessee concerning the location and movement of the cars subject to this Agreement.

**Notice:**

19. All notices provided for herein shall be given in writing and telefaxed, or sent by registered or certified mail, return receipt

requested. The effective date of the notice shall be the date of the telefax transmittal receipt, or date of delivery shown on the return receipt. The respective addresses for notice shall be the addresses of the parties given in writing at the execution of the Agreement. Such addresses may be changed by either party giving written notice thereof to the other.

All telefaxed correspondence must request confirmation from the receiving party confirming legible receipt within one working day in order to qualify as "being delivered".

**Governing  
Law:**

20. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Texas, in which state it has been executed and delivered.

**Option to  
Extend:**

21. Lessee shall have the option to extend this lease for additional five (5) year periods providing that the Lessee has notified the Lessor of Lessee's intent to extend at least ninety (90) days prior to the termination of this lease or extensions thereof. All conditions of the initial lease will remain effective and unchanged unless changed in writing by mutual agreement.

**Warranty:** 22. Lessor will provide a warranty covering defective materials and/or workmanship for a period of 90 days from date of cars entering Lessee's service. This warranty is of a workmanship nature only and is invalid in the event of car misuse, abuse, neglect, derailment, or wreck damage. Ordinary wear and tear is excluded from warranty coverage. All warranty claims must be communicated within five working days after defect has been discovered and Lessor reserves the right to cure all warranty claims internally, or advise Lessee on proper claim resolution.

**Assignment:** 23. Lessor shall have the right at any time to sell, assign, pledge or transfer all or any part of this lease and/or the equipment covered thereby. Lessee shall not have the right to assign its interest in this lease or sub-lease the equipment covered thereby without the prior written consent of Lessor. Such consent will not be unreasonably withheld.

**Entire  
Agreement:**

24. No other representations, warranties, promises, guarantees, or agreements, oral or written, expressed or implied, have been made by either party hereto with respect to this Agreement, except as expressly provided herein or executed by Letter Agreement contemporaneously herewith. This Agreement constitutes the entire Agreement between the parties hereto with respect to the leasing of the rail cars. Any change or modification of this Agreement must be in writing and signed by both parties hereto.

**Waiver:**

25. Failure of either Party to require performance of any provision of this Agreement shall not affect either Party's right to require full performance thereof at any time thereafter, and the waiver by either party of a breach of any provisions hereof shall not constitute a waiver of a similar breach in the future or of any other breach or nullify the effectiveness of such provision.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed and sealed by their respective corporate officers and duly attested, as to the date first above written.

(Corporate Seal)

I T G, Inc. (LESSOR)

ATTEST:

By: Sally Janca  
Its: Asst. Secretary

By: [Signature]  
Its: President

Address:  
106 N. Main, Suite #200  
P. O. Box 1777  
Victoria, Texas 77902

(Corporate Seal)

United States Gypsum Company  
(LESSEE)

ATTEST:

By: [Signature]  
Its: Secretary

By: Alvin J. Carvin  
Its: DIRECTOR, TRANSPORTATION

Address:  
125 South Franklin St.  
Chicago, Ill. 60606-4678  
ATTN: Mr. Daniel Carey  
Manager of Transportation

RIDER NO. 01

To Master Agreement No. ITG-2368

It is hereby agreed that effective August 4, 1992, this Rider shall become a part of Master Car Agreement NO. ITG-2368, between United States Gypsum Company, and ITG, Inc., dated August 4, 1992, and the cars described herein shall be placed in service subject to the terms set forth below:

CAR NUMBERS:	12500 thru 12506
CAR OWNER MARKS:	ITGX
CLASS OF CAR:	C612/LO (207A40W)
NUMBER OF CARS:	Seven (7)
CAPACITY OF CARS:	3000 cu. ft./100-tons
COMMODITY LIMITATION:	Dry Bulk Products
DELIVERY POINT:	J. M. Huber Co. Qunicey, Illinois
TERMS OF RENT:	per car per month payable net 10 days monthly in advance, as provided for in Paragraph 3 of Lease ITG-2368
TERM:	For a minimum of sixty (60) months from the date all cars are in service with options to renew. Renewals or additions to this lease will be added by means of additional Riders.

(Corporate Seal)

ATTEST:

By: Sally Janca  
Its: Asst. Secretary

(Corporate Seal)

By: Erwin M. Mace  
Its: Secretary

I T G, INC.

By: [Signature]  
Its: President

United States Gypsum Company

By: Ann J. Quinn  
Its: DIRECTOR, TRANSPORTATION

RIDER NO. 02

To Master Agreement No. ITG-2368

It is hereby agreed that effective August 4, 1992, this Rider shall become a part of Master Car Agreement No. ITG-2368, between United States Gypsum Company, and ITG, Inc., dated August 4, 1992. In the event a car(s) is damaged or destroyed by United States Gypsum Company, its agents, or material suppliers and the car(s) is beyond economical repair, the settlement value for such destroyed car(s) payable to ITG, Inc., with United States Gypsum Company, to retain the destroyed unit for their disposition is:

INSURANCE & CASUALTY SCHEDULE

ITGX 12500 thru 12506

The greater value of:

	<u>YEAR</u>	<u>VALUE</u>
A.	1 thru 3	\$30,000.00
	4	\$28,000.00
	5	\$26,500.00
	6	\$25,000.00
	7	\$23,500.00
	8 and thereafter	\$22,000.00

or, B. Rule 107 Settlement Value

(Corporate Seal)

ATTEST:

By: Sally Janca  
Its: Asst. Secretary

(Corporate Seal)

By: Edwin M. [Signature]  
Its: Secretary

I T G, INC.

By: [Signature]  
Its: President

United States Gypsum Company

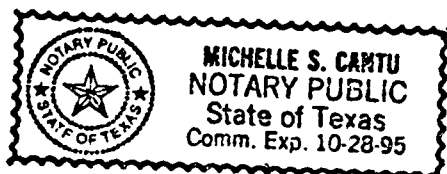
By: Alan J. [Signature]  
Its: Director, TRANSPORTATION



STATE OF ( TEXAS

CITY OF ( VICTORIA

On this 6<sup>th</sup> day of August, 1992, before me personally appeared Michael Sagebiel, to me personally known, who being by me duly sworn, says that he is the President of ITG, Inc., that the foregoing instrument was signed on behalf of said corporation, and he acknowledge that the execution of said instrument was his free act and deed.



Michelle S. Cantu  
NOTARY PUBLIC, STATE OF TEXAS

My Commission expires: 10-28-95

STATE OF

( Illinois

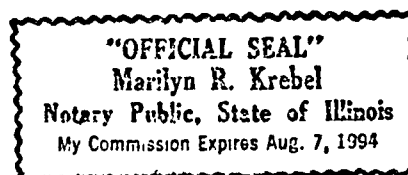
COUNTY OF

( Cook

On this 6<sup>th</sup> day of August, 1992, before me personally appeared Alex J. Parvin, to me personally known, who being by me duly sworn, says that he is Director of Transportation, that the foregoing instrument was signed on behalf of said corporation, and he acknowledged that the execution of the said instrument was his free act and deed.

Marilyn R. Krebel  
NOTARY PUBLIC

My commission expires: 8/7/94



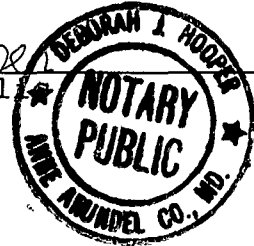
RECORDATION NO. \_\_\_\_\_ FILED 1425

MAY 10 1993 10:50 AM

I HEREBY acknowledge that the attached ~~Railroad~~ <sup>INTERSTATE COMMERCE COMMISSION</sup> Agreement is true copy of the original Railroad Car Lease Agreement.

WITNESS my hand and Notarial Seal.

Deborah J. Hooper  
Notary Public



My Commission Expires: 7-27-94